

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 93-756-C - ORDER NO. 94-563 ✓
June 30, 1994

IN RE: Request of Southern Bell for) ORDER APPROVING REVISIONS
Approval of Revisions to its) TO ACCESS SERVICE TARIFF
Access Service Tariff to) TO RESTRUCTURE SWITCHED
Restructure Switched Access) ACCESS LOCAL TRANSPORT
Local Transport)

This matter is before the Public Service Commission of South Carolina (the Commission) on Southern Bell Telephone and Telegraph Company's (Southern Bell's) request for approval of its revisions to its Access Service Tariff. Southern Bell's request was filed pursuant to S.C. Code Ann. §58-9-520 (Supp. 1993).

By letter dated November 10, 1993, the Commission's Executive Director instructed Southern Bell to publish, one-time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The Notice of Filing indicated the nature of Southern Bell's tariff revisions and instructed all interested persons of the manner in which to intervene. Southern Bell complied with this instruction. Petitions to Intervene were submitted by AT&T Communications of the Southern States, Inc. (AT&T) and LDDS of Carolina, Inc. (LDDS).

On April 7, 1994, the Commission convened a public hearing to consider Southern Bell's proposed tariff revisions. The Honorable Rudolph Mitchell, Vice-Chairman, presided. William F. Austin, Esquire, Mary Jo Peed, Esquire, and Kevin A. Hall, Esquire,

represented Southern Bell; Francis P. Mood, Esquire, represented AT&T; Frank R. Ellerbe, III, Esquire, represented LDDS; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

After careful consideration of the evidence of record and the applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In 1982, the United States District Court for the District of Columbia adopted the Modification of Final Judgment in United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983) (the MFJ). In relevant part, the MFJ provided that "charges for delivery on receipt of traffic of the same type between end offices and facilities [local transport] of interexchange carriers [IXCs] within an exchange area...be equal, per unit of traffic, delivered or received, for all IXCs." Id. at 233-234. In other words, "similarly situated IXCs would be charged the identical rate for each unit of traffic that was originated or terminated on the system of an individual Bell Operating Company (BOC)." Tr., p. 15, lines 17-21. The purpose of this "equal charge rule" was to stimulate IXC competition following divestiture at a time when AT&T commanded the vast majority of the long distance market. Tr., p. 16, lines 3-5; p. 97, line 18 - p. 98, lines 3-4; p. 105, lines 16-23. Under its own terms, the MFJ expired on September 1, 1991. Tr., p. 98, lines 3-4.

2. On October 16, 1992, the Federal Communications Commission (FCC) released its Report and Order and Further Notice

of Proposed Rulemaking adopting a new switched transport rate structure which replaced the equal charge rule. The FCC concluded that its new switched transport structure met its objectives: encouraging the efficient use of transport facilities by allowing prices that reflect cost, facilitating full and fair interexchange competition, and avoiding interference with the development of interstate access competition. Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd. 7006 (1992).

3. Southern Bell's interstate local transport revisions were accepted by the FCC and became effective on December 30, 1993. The North Carolina, Alabama, and Kentucky utility commissions have approved Southern Bell's revisions to its intrastate local transport tariff. Tr., p. 26, lines 4-11.

4. In South Carolina, Southern Bell currently offers local transport under the terms of the equal charge rule. Under this structure, local transport rates are based on usage and distance sensitive elements. According to Southern Bell witness Jerry Hendrix:

The distance sensitive charges are not currently dependent on the routing of the calls or the facilities utilized. That is, the miles are measured from serving wire center to end office regardless of whether the call is routed directly to an end office or routed through an access tandem... In addition, the same per minute charge is assessed all customers regardless of the capacity that customer demands or utilizes. This means that if an IXC currently has enough traffic to completely utilize a particular facility, to the exclusion of all other IXCs, the first IXC is still charged on a per minute basis, without regard to the cost of the particular facility it uses. Emphasis added.

Tr., p. 18, lines 2-16.

5. Under Southern Bell's proposed revisions to its access tariff, there are three primary changes in the local transport service¹:

- A. Separate charges will apply depending upon the entrance facility ordered by the IXC;
- B. Two primary choices for interoffice transport will be available - dedicated transport (either DS3 or DS1), billed on a flat rate basis, and tandem switched transport, billed on a usage basis with separate charges for transmission and tandem switching;²
- C. An interconnection charge³ will apply to all customers based on minutes of use.

6. LDDS witness Joseph Gillan testified that LDDS does not oppose the restructuring of the local transport service tariff. Tr., p. 129, line 9. Gillan testified that the Commission should in fact "adopt a new structure for transport rates that allows there to be some price difference to interexchange carriers based on the configuration that they [IXCs] purchase." Tr., p. 155, lines 10-14. Gillan explained, however, that any rate difference between local transport services should be based on actual cost to avoid discrimination between IXCs.⁴ Tr., p. 127, lines 8-10; p.

1. All access service customers will continue to pay the same rate for carrier common line, local switching, interconnection and information surcharge rates. These charges represent more than 96% of the average switched access rate per access minute. Tr., p. 25, lines 18-23.

2. Whether an IXC selects DS3, DS1, or tandem switched transport depends on the number and density of its customers.

3. The interconnection charge was residually priced and is designed to keep this filing revenue neutral for Southern Bell. Tr., p. 25, lines 6-10.

4. In its Brief, LDDS specified that "the dispute in the case concerns the interoffice transport element as proposed by Southern Bell." Brief, p. 1.

129, lines 9-10; p. 136, lines 5-7; p. 155, line 19. LDDS offered its own proposal for the restructuring of local transport rates.

7. Mr. Gillan asserted that because of their customer bases, AT&T will be expected to utilize DS3 dedicated transport; MCI/Sprint will utilize DS1 transport; and smaller interexchange carriers will be more dependent upon tandem-switched transport. Tr., p. 137, lines 7-10. Consequently, because Southern Bell's proposed local transport rates are not based on actual cost, LDDS contends the rates will result in competitive disadvantages between the IXC groupings.

8. In addition, LDDS asserts that, because the less expensive DS3 transport option will be economically justified in more densely populated areas, the cost to serve rural areas will be more expensive and, as a result, there will be fewer IXC choices for customers in rural areas. Tr., p. 128, lines 14-20; p. 137, line 19 - p. 138, line 5.

9. Finally, LDDS contends that only if transport prices properly reflect cost will there be an incentive for IXCs to reconfigure their access services. Tr., p. 128, line 22 - p. 129, line 5.

10. Southern Bell witness Hendrix testified that the proposed tariff "more closely reflects the way transport is provided and the way costs are incurred [than under the equal charge rule]." Tr., p. 19, lines 12-14. Transport rates will depend on the IXC's routing request and the capacity which is dedicated to the IXC's use.

11. Mr. Hendrix explained that while the proposed rates for

transport service are not cost based, each rate for each type of transport service covers its cost and contributes to reduce local rates. Tr., p. 35, line 22 - p. 36, line 5; p. 58, lines 13-19.

12. Mr. Hendrix further explained that Southern Bell priced its transport services at rates which mirror the interstate transport rates. He testified that if the rates in both jurisdictions are the same, there is less incentive for IXCs to misreport their percentage of interstate minutes of use (P.I.U.) in South Carolina. Mr. Hendrix testified that it is less costly to bill customers when rates in both jurisdictions are the same. Finally, Mr. Hendrix explained that the same prices discourage tariff shopping by IXCs. Tr., p. 36, line 9 - p. 37, line 16.

13. Mr. Hendrix testified that the proposed rates also discourage IXCs from purchasing switched access from providers other than the local exchange companies.

14. Mike Guedel testified on behalf of AT&T in support of Southern Bell's proposed tariff. Mr. Guedel testified that Southern Bell's proposed restructuring of its local transport tariff should encourage IXCs to more efficiently use the LEC network and provide the opportunity for competition to develop in the provisioning of some access services. Tr., p. 102, lines 21-24; p. 106, line 20 - p. 107, line 1.

15. Mr. Guedel testified that the proposed restructuring will not limit customer choice for IXCs in rural areas. He explained that in rural areas all IXCs will be purchasing the same facilities and, therefore, in regard to transport options, no one IXC will have a competitive advantage over others. Tr., p. 110, line 21 -

p. 111, line 8.

CONCLUSIONS OF LAW

1. The Commission approves Southern Bell's proposed revisions to its Access Service Tariff to restructure switched access local transport.

2. LDDS contends that Southern Bell's proposed rates for the various local transport options violate S.C. Code Ann. §58-9-250 (1976) because there is no justification supporting the different rates. LDDS asserts that the differences in the prices for the three transport options are only justified if in fact they reflect the actual cost differences between the services.

2. S.C. Code Ann. §58-9-250 (1976) provides as follows:

No telephone utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable prejudice or disadvantage. No telephone utility shall establish or maintain any unreasonable difference as to rates or service, either as between localities or as between classes of service. Subject to the approval of the Commission, however, telephone utilities may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered or any other reasonable consideration. The Commission may determine any question arising under this section.
(Emphasis added.)

4. The Commission concludes that the rate differences between the three local transport options are justified. This Commission has never required telephone utilities to base rates on the actual cost to provide the service.⁵ While this Commission has

5. As noted by witness Gillan, the FCC does not require that the local transport rate differences be justified by cost differences. Tr., p. 144, lines 14-15.

required competitive and optional services to be priced at rates which at least cover their costs, some utilities contend that the rates for other services, such as basic local service, do not cover the services' cost. Although the Commission will not require the rate differentials in this proceeding to be cost-based, it does note that the differentials are more cost-based than under the equal charge rule.

Moreover, the Commission finds that the difference in price between the three local transport options is clearly justified by the differences in demand placed on Southern Bell's facilities. As noted by witness Hendrix, Southern Bell incurs the cost of multiplexing with DS1 and switched transport and the additional cost of the tandem switching function in switched transport. Neither of these services are necessary for DS3 transport. Tr., p. 55, line 23 - p. 56, line 21.

In addition, the Commission concludes that the price differentials promote the efficient use of Southern Bell's network by IXCs. As stated in the record, IXCs can aggregate their traffic to justify purchasing DS1 or DS3 service. Tr., p. 74, line 16 - p. 75, line 2.⁶ Any risk associated with the purchase of local transport should be placed on the IXC since it has the ability to make routing and capacity decisions.

The Commission concludes that the rate differentials are justified by other significant and important policy considerations. While the Commission has never required intrastate rates to be in

6. Southern Bell has waived nonrecurring charges until June 30, 1994, so that IXCs may reconfigure their routing arrangements without incurring transactional costs. Tr., p. 20, lines 15-18.

parity with interstate rates, the Commission has been moving toward jurisdictional similarities. See Order No. 92-889 (October 16, 1992) Docket No. 92-094-C. Further, the Commission concludes that the same rate structure for interstate and intrastate local transport rates will simplify administration for Southern Bell and discourage IXCs from misreporting their percentage of interstate minutes in South Carolina.

Moreover, the Commission has a legitimate interest in protecting the rates for basic local service. As such, the Commission is concerned that IXCs will obtain access service from non-LEC access providers and, consequently, remove their contribution to the local rates. For this reason, the Commission concludes that rates which promote the economic and efficient use of the LEC network by the IXCs should be encouraged.

Similarly, the Commission desires that ratepayers in rural areas of the State have a variety of carrier choices for long distance service. The Commission is not convinced that the rates approved here will affect the carriers operating in rural areas. Instead, the Commission concludes that because of the less populous nature of rural areas, large IXCs will purchase the same transport options as smaller carriers in rural areas. Consequently, the IXCs will be paying the same rates for local transport and the same choices for carriers will be available in rural as well as urban areas.

Lastly, LDDS argues that S.C. Code Ann. §58-9-230(B)(Supp. 1993) only permits LECs to establish competitive rates after a finding by this Commission that there is in fact competition for

the service. The Commission disagrees.

In relevant part, S.C. Code Ann. §58-9-230(B) provides as follows:

Local exchange company centrex-type services or billing and collection services, or both, may be offered to subscribers without the schedules related thereto being filed as provided in subsection (A), if the Commission, after hearing, first determines that such services are subject to competition in the relevant product and geographic markets.....

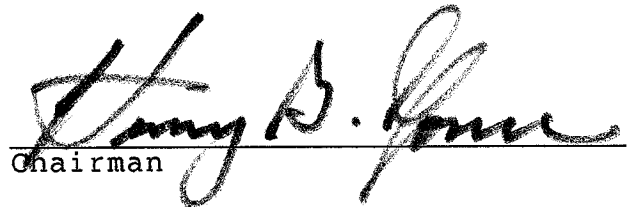
The Commission concludes that for centrex-type or billing and collection services, Section 58-9-230(B) allows LECs to charge rates other than as filed in their tariffs if there has been a finding that those services are subject to competition. Here, the Commission will require Southern Bell to adhere to charging the local transport rates set forth in its access service tariff. Consequently, the Commission finds that its ruling in this matter in no way violates Section 58-9-230(B).

Finally, this Order is not to be construed as expressing a definitive policy regarding competitive pricing for access services. However, for this initial decision regarding the pricing

7. Subsection A prohibits a telephone utility from charging rates other than as set forth in its tariff.

of unbundled access services,⁸ the Commission concludes that non-cost based rates are appropriate and hereby approves the revisions to Southern Bell's Access Service Tariff. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

8. The Commission notes that the local transport rate constitutes less than 4% of the overall access charge.